

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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REPORT AND RECOMMENDATION

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Robert L. Follis and Georgia K.
Follis,

Plaintiffs,

vs.

State of Minnesota Attorney
General, Human Services
Department, and Military
Affairs Department, Morrison
County Human Services
Department, and Todd County
Human Services Department,

Defendants.

Civ. No. 08-1348 (JRT/RLE)

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This matter came before the undersigned United States Magistrate Judge pursuant to a general assignment, made in accordance with the provisions of Title 28 U.S.C. §636(b)(1)(B), on a consideration of the need for a continuation of the Stay that was imposed in this action. See, Docket No. 49. The extensive factual and procedural background of this case were detailed in our previous Recommendation,

see, Docket No. 47, and will not be reiterated here, and the question presented is whether a previously imposed Stay should now be lifted.

By Order dated September 4, 2008, following our Report and Recommendation, see, Docket No. 16, the District Court, the Honorable John R. Tunheim presiding, denied the Plaintiffs' Motion for a TRO, and further denied the Plaintiffs' Motion for a Permanent Injunction. See, Order, Docket No. 30. Thereafter, the Defendants filed Motions to Dismiss the Plaintiffs' Complaint based, in part, upon the doctrine of res judicata.¹ See, Docket Nos. 19, 26. However, on October 6, 2008, the Plaintiffs filed a Notice of Appeal, in which they notified the Court of their intention to appeal the denial of their Motion for a TRO, and their Motion for a Permanent Injunction, to our Court of Appeals. See, Docket No. 36. On the same date, the Plaintiffs filed a Motion for a Stay, in which they requested that we stay this action, pending the resolution of their appeal. See, Docket No. 38. By Order dated December 29, 2008, following our Report and Recommendation, see, Docket No. 47, the District Court, the Honorable John R. Tunheim presiding, granted the Plaintiffs' Motion for a Stay until

¹The Defendants also assert the Rooker-Feldman Doctrine, Eleventh Amendment immunity, statutory immunity, official immunity, and the statute of limitations, as alternative bases for dismissal, as well as the Plaintiffs' alleged failure to state a claim. See, Docket Nos. 27, 31.

the Court of Appeals had ruled on the Plaintiffs' pending Appeal. See, Docket No. 49. Thereafter, on June 24, 2009, the Court of Appeals affirmed the District Court's denial of the Plaintiff's request for preliminary injunctive relief. See, Docket Nos. 52-53. Accordingly, the purpose of the Stay now having been mooted by the Court of Appeals' ruling, we recommend that the Stay be lifted.

NOW, THEREFORE, It is --

RECOMMENDED:

That the Stay in this case be lifted.

Dated: August 4, 2009

s/ Raymond L. Erickson
Raymond L. Erickson
CHIEF U.S. MAGISTRATE JUDGE

NOTICE

Pursuant to Rule 6(a), Federal Rules of Civil Procedure, D. Minn. LR1.1(f), and D. Minn. LR72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court, and by serving upon all parties **by no later than August 21, 2009**, a writing which specifically identifies those portions of the Report to which objections are made and the bases of those objections. Failure to comply

with this procedure shall operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals.

If the consideration of the objections requires a review of a transcript of a Hearing, then the party making the objections shall timely order and file a complete transcript of that Hearing **by no later than August 21, 2009**, unless all interested parties stipulate that the District Court is not required by Title 28 U.S.C. §636 to review the transcript in order to resolve all of the objections made.